

SECRET

DD/S 71-3632

17 SEP 1971

MEMORANDUM FOR: Legislative Counsel

ATTENTION :

SUBJECT : Request for Information or Recommendations  
Concerning the Freedom of Information Act  
(Chairman Moorhead's Questionnaire)

25X1A [REDACTED]

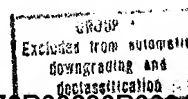
1. Components of the Support Directorate have received no direct requests from the public for access to records under the Freedom of Information Act. The Office of Personnel, of course, receives and responds to requests for information from prospective employers of former employees concerning recommendations or references; requests from attorneys for sick leave balances as a part of civil litigation; and the like. I assume, however, that requests of this nature do not come under the provisions of this law.

2. Question 4 of Chairman Moorhead's questionnaire asks: "What legend is used by your agency to identify records which are not classifiable under Executive Order 10501 but which are not to be made available outside the government? Please list each term and explain its application."

Comment: Documents with control markings such as "Administrative-Internal Use Only" or "For Official Use Only" are not normally made available outside the government.

3. Questions 5, 6 and 7 ask how many Agency people are authorized to classify material Top Secret, Secret, and Confidential under the terms of Executive Order 10501, and asks that individuals authorized to classify material Top Secret be identified by name and title.

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Comment: [REDACTED] states "Authority to assign an original classification to information or material shall be delegated to such officers and employees throughout the Agency as are necessary to the orderly and expeditious transaction of Agency business". Listing of CIA personnel authorized to classify documents would be a tremendous task but Section 6 of the CIA Act of 1949 exempts the Agency from disclosing the names, official titles, salaries and numbers of Agency personnel.

4. Chairman Moorhead requested copies of rules, directives, and orders or memoranda implementing the Freedom of Information Act, the handling of records and information not classifiable under Executive Order 10501. We would have no objection to the declassification and release of [REDACTED] Release of CIA Information to the Public (copy attached) but the Executive Director-Comptroller would have to approve its release.

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5. The Agency Records Management Officer is ordinarily asked to concur or comment on requests for the release or declassification of certain OSS records still in the possession of the Department of the Army. We have received 20 requests of this kind during the past four years. Of the 20, the Agency Action Office (DDP/RID) had no objection to declassification in 15 instances and recommended against declassification in 5 instances. It is my understanding that requests of this kind have been coming to the Agency for a number of years without regard to the Freedom of Information Act. You may want to discuss with the Chief, RID the applicability of the Freedom of Information Act to requests of the kind received by RID.

[REDACTED]

25X1A

Chief, Support Operations Staff/DD/S

Attachment

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9 SEP 1971

MEMORANDUM FOR: Chief, Support Operations Staff, DDS

SUBJECT : Requests for Information or Recommendation

REFERENCE : Memo for Multiple Addressees from C/SOS/DDS dtd 2 Sep 71,  
Same Subject

25X1A  
25X1A  
1. I discussed the correspondence received from Chairman Moorhead requesting information on the application of the Freedom of Information Law in the Agency with [REDACTED] Office of Legislative Counsel. [REDACTED] said he thought that Mr. Goodwin would be the principal Agency officer replying to this request and that he, [REDACTED] did not think that the DDS would have anything to contribute to whatever final reply is prepared.

25X1A  
25X1A  
25X1A  
2. As [REDACTED] explains it, the Freedom of Information Law pertains to information held in a Federal Agency that is considered the rightful property of the public. Agencies under the law are required to reply when the public asks for this kind of information and can be taken to court if they do not. Classified material, medical and security material, and information pertaining to the internal rules and procedures of personnel administration would be exempt from necessary disclosure according to [REDACTED]. I did ask if the kinds of responses we make to prospective employers concerning recommendations or references for ex-employees, sick leave balances requested by attorneys as a part of civil litigation, etc., would fall under the provisions of this law. [REDACTED] did not think it would. He did suggest that I reply to you in this manner so that he would have it for the record. He intends to review the correctness of this position with General Counsel at the time he prepares the reply to Chairman Moorhead.

[REDACTED]  
Deputy Director of Personnel

Att

GROUP 1  
Excluded from automatic  
downgrading and  
declassification

DD/S 71-3435


2 SEP 1971

MEMORANDUM FOR: Director of Personnel  
Director of Security  
Chief, Support Services Staff

SUBJECT : Request for Information or Recommendation

1. Attached is correspondence requesting information on the application of the Freedom of Information Law in the Agency. As requested by the Legislative Counsel, please provide whatever information or recommendations you have concerning this request to permit a coordinated reply.

2. I will appreciate receiving your response by 14 September 1971.

  
Chief, Support Operations Staff, DD/S

25X1A

Att.

## ROUTING AND RECORD SHEET

SUBJECT: (Optional)

08C 71-1242

FROM:

OLC  
7D35

EXTENSION

NO.

OLC 71-0854

DATE

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S  
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. OGC

7/20/71

7/20/71

JW

Copies of the attached request from Chairman Moorhead for information on the Freedom of Information Act are being sent to OGC, DDS, and Mr. Goodwin.

Please provide us with whatever information or recommendations you have concerning Chairman Moorhead's request so that we can draw up a coordinated reply.

I believe we can certainly answer questions 1, 2, and 3. It seems unlikely that we can really answer 4 through 7. The final request for a copy of our rules is okay, since this is published in the Federal Register.



UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

Reply to the  
Division Indicated  
by Initials and Number

December 8, 1969 ✓

MEMORANDUM TO GENERAL COUNSELS OF  
ALL FEDERAL DEPARTMENTS AND AGENCIES

Re: Coordination of Certain Administrative  
Matters under the Freedom of Information  
Act, 5 U.S.C. 552.

Distribution List

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WASHINGTON, D.C. 20530

December 8, 1969

Address Reply to the  
Division Indicated  
Refer to Initials and Number

MEMORANDUM TO GENERAL COUNSELS OF  
ALL FEDERAL DEPARTMENTS AND AGENCIES

Re: Coordination of Certain Administrative  
Matters under the Freedom of Information  
Act, 5 U.S.C. 552.

The Freedom of Information Act, providing for compulsory disclosure of agency records not exempted by the Act, confers administrative responsibility on each agency and makes the agency's final decisions subject to judicial review. The Department of Justice conducts litigation in defense of agency determinations under the Act and furnishes certain advisory and other services pertaining to Freedom of Information problems. In general, the Department's litigation functions in this area are conducted by the Civil Division, and the advisory and other functions are conducted by the Office of Legal Counsel.

In discharging these functions, the Department has noted several developments which we believe warrant your



attention. First, the government in recent months has lost cases in court which involved a number of the exemptions contained in the Act. Consumers Union v. Veterans Administration, 301 F. Supp. 796 (S.D.N.Y. July 10, 1969) (involving exemptions 2, 3, 4 and 5); General Services Administration v. Benson, 415 F. 2d 878 (9th Cir. Aug. 26, 1969) (exemptions 4 and 5). Second, there has been considerable variation in agency practices with respect to consulting the Department on Freedom of Information controversies before the agency takes final action which may result in the filing of suit against the agency. Third, there are particular problem areas under the Act which are common to a number of agencies, where an exchange of views may be beneficial.

The implications of the judicial decisions cited above, as well as other cases, are under continuing review in the Department. However, enough review has already been accomplished to point to two conclusions: (1) Although the legal basis for denying a particular request under the Act may seem quite strong to an agency at the time it

else finally to refuse access to the requested records, the justification may appear considerably less strong when later viewed, in the context of adversary litigation, from the detached perspective of a court and from the standpoint of the broad public policy of the Act; (2) An agency denial leading to litigation and a possible adverse judicial decision may well have effects going beyond the operations and programs of the agency involved, insofar as it creates a precedent affecting other departments and agencies in the Executive Branch.

In view of the foregoing, it seems manifestly desirable that, in most instances, litigation should be avoided if reasonably practicable where the government's prospects for success are subject to serious question. This can often best be done if, before a final agency rejection of a request has committed both sides to conflicting positions, the matter is given a timely and careful review, in terms of litigation risks, government-wide implications, and the policy of the Act, as well as the agency's own interests. To facilitate review of the nature just described, we need your cooperation. To

improve cooperation on our part, we have just established an informal committee of representatives of the Civil Division and of the Office of Legal Counsel.<sup>1/</sup> The functions of this committee will be to assist in such review and help assure closer coordination in our work.

We request that in the future you consult this Department before your agency issues a final denial of a request under the Freedom of Information Act if there is any substantial possibility that such denial might lead to a court decision adversely affecting the government. Such consultation will serve the review function discussed above, and in some instances may also enable us to assist you in reaching a disposition of the matter reasonably satisfactory both to your agency and to the person making the request. The requested consultation may be undertaken

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<sup>1/</sup> The members of this committee as of now are: Jeffrey F. Axelrad, Civil Div., ext. 3300; Robert V. Zener, Civil Div., ext. 3354; Steven P. Lockman, Office of Legal Counsel, ext. 2039; and Robert L. Saloschin, Office of Legal Counsel, ext. 2674, chairman. Deputy Assistant Attorney General Thomas E. Kauper, Office of Legal Counsel, ext. 2051, will be chairman ex officio.

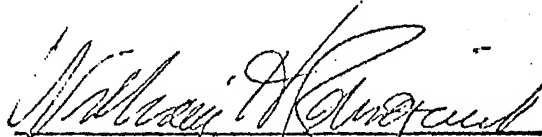
formally or informally as you prefer, and ordinarily should be directed initially to the Office of Legal Counsel rather than to the Civil Division.

As regards the third development under the Act noted near the beginning of this memorandum -- the emergence of certain problem areas common to several agencies on which exchanges of view and experience may be mutually beneficial -- there is one such area warranting mention at this time. This area consists of various questions as to the availability of information on the testing of manufactured and other products (including such items of information as the identity of the maker or supplier, brand names, models, generic descriptions, test criteria, test procedures, test results, comparative ratings, limitations pertaining to products or characteristics not tested, etc.). If the activities of your agency involve testing or information pertaining thereto, we would welcome any statements of experience, policies or views which you may care to provide. Such statements may prove use-

ful to other agencies engaged in similar activities and to this Department in representing or counseling such agencies.

It is our hope that through the consultation and review procedures outlined above and through exchanges of experience and views on problems of common interest, positive benefits will accrue to individual agencies, the government as a whole, and the public.

Please feel free to call us if you have any questions about the foregoing.



William H. Rehnquist  
Assistant Attorney General  
Office of Legal Counsel



William D. Ruckelshaus  
Assistant Attorney General  
Civil Division